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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re J.R., a Person Coming Under the Juvenile Court Law. _____ LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. KARLA R., Defendant and Appellant.	B258110 (Los Angeles County Super. Ct. No. CK92569)

APPEAL from orders of the Superior Court of Los Angeles County, Stephen Marpet, Commissioner. Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, Navid Nakhjavani, Deputy County Counsel for Plaintiff and Respondent.

Karla R. (mother) appeals from the juvenile court's order terminating her parental rights to J.R., born in June 2011. Mother's sole contention on appeal is that the juvenile court erred in denying alleged father Andres M.'s request for a paternity test.[1] We conclude that mother lacks standing to raise this issue and, in any event, any error was not prejudicial. We thus affirm the order terminating mother's parental rights.

FACTUAL AND PROCEDURAL BACKGROUND

I. Detention

J.R. is the child of mother and an unknown father. The family came to the attention of the Department of Children and Family Services (DCFS) in February 2012 when an anonymous caller reported that mother was emotionally and physically abusing J.R., and mother and maternal aunt Kimberly R. were selling and using methamphetamines in J.R.'s presence. Mother tested positive for methamphetamines on February 24 and March 7, 2012, and J.R. was detained on March 12, 2012.

At a detention hearing March 15, 2012, the court found a prima facie case for detaining J.R. Mother submitted a "Parentage Questionnaire," in which she stated under penalty of perjury that she believed J.R.'s father was Ruben C., who died February 3, 2011. The court found Ruben to be J.R.'s alleged father.

II. Jurisdiction and Disposition

DCFS filed a juvenile dependency petition on J.R.'s behalf on March 15, 2012. As subsequently amended, the petition alleged jurisdiction over J.R. pursuant to Welfare and Institutions Code section 300, subdivision (b),[2] because mother was a current user of amphetamines and methamphetamines, which rendered her incapable of providing regular care of J.R. and placed him at risk of harm.

The jurisdiction and disposition report, dated April 16, 2012, said mother had not made herself available to be interviewed. DCFS recommended that J.R. be declared a

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[1] Andres is not a party to this appeal.

[2] All subsequent undesignated statutory references are to the Welfare and Institutions Code.

dependent child and that mother be provided family reunification services and monitored visits.

On April 16, 2012, mother pled no contest to the allegations of the petition. The court ordered mother to submit to weekly on-demand drug testing, to participate in a drug program, and to attend parent education and individual counseling. Mother was granted monitored visitation twice each week.

III. Review

The six-month status review report, dated October 15, 2012, said J.R. was doing well in his foster placement. Mother had enrolled in substance abuse counseling but drug tested inconsistently. She claimed to be attending Alcoholics Anonymous (AA) meetings, but had not provided her children's social worker (CSW) with sign-in sheets and did not have a sponsor. She had not enrolled in individual counseling and was not regularly visiting J.R. On October 24, 2012, the court ordered DCFS to continue to offer mother family reunification services.

The twelve-month status review report, dated April 24, 2013, said mother had avoided all contact with DCFS during the prior six months. She had enrolled in a substance abuse program, but was terminated from the program in December 2012 for lack of compliance. Mother had completed a parenting class, but had not enrolled in individual counseling or provided any evidence that she had secured a sponsor. She visited J.R. only about once per month. Mother had one negative drug test in November 2012, but had missed all other scheduled drug tests from October 2012 through March 2013. On April 24, 2013, the court set a hearing on July 23 to determine whether mother's family reunification services should be terminated.

The July 23, 2013 Interim Review Report said mother completed substance abuse counseling in April 2013 and parenting education in October 2012. Mother had not participated in individual counseling and did not drug test in May, June, or July 2013. She had been visiting J.R. regularly since late April 2013, but continued to avoid her CSW. Based on the foregoing, DCFS recommended that mother's family reunification services be terminated.

On July 23, 2013, and again on September 17, 2013, the juvenile court ordered DCFS to continue to provide mother with family reunification services. On December 6, 2013, however, the court terminated mother's reunification services and set a section 366.26 hearing for April 8, 2014. That hearing subsequently was continued to July 8, 2014.

IV. Andres's Appearance and Request For a Paternity Test; Termination of Parental Rights

In a "Last Minute Information for the Court," DCFS said it was contacted on June 16, 2014, by Andres M. (Andres), who claimed to be J.R.'s father. Andres said he had been romantically involved with mother in 2010. DCFS further reported as follows: "Mr. [M] reported that he was arrested and incarcerated in 11/2010 and was released in 12/2011. Mr. [M] reported that he made contact with [mother] and she informed him that he was J.R.'s father. Mr. [M] reported that he saw [J.R.] a few times before being arrested and incarcerated again in 03/2012. Mr. [M] was released into Delancy Street, a behavior modification program in 06/2012 and kicked out in 04/2013. In 04/2013 he entered Amitty Foundation, w[h]ere he remained until 03/2014. Mr. [M] stated that he re-connected with [mother] via Facebook in 03/2013 and she did not tell him that [J.R.] was in foster care until this month. Mr. [M] stated that he would be attending the July 8th hearing, asking to be acknowledged as [J.R.]'s father."

On July 8, 2014, Andres appeared in court and submitted a JV-505 Statement Regarding Parentage (statement). The statement said Andres did not know if he was J.R.'s father and requested a paternity test. It also said Andres had told family members he was J.R.'s father, had "visited [J.R.] a couple times in 2011" and once in 2014, gave mother "diapers and other necessities," and gave J.R. money for his birthday in 2014.

At the July 8 hearing, mother's counsel asked the court to appoint counsel for Andres and order a paternity test. The court refused: "First of all, this gentleman, at best, can be nothing more than an alleged father. . . . Even if he's the biological father, he's an alleged father. He's never presented himself to court in the last two years. And there's no basis upon which I would grant any continuance or appoint counsel. There's no basis.

He is an alleged father only and the statute doesn't even provide I should appoint counsel so I'm going forward." The court subsequently found by clear and convincing evidence that J.R. was likely to be adopted, and it terminated the parental rights of mother, Ruben, "and all other persons claiming to be father, including any identity unknown father, to the child [J.R.]."

DISCUSSION

Mother's sole contention on appeal is that the trial court erred in denying Andres's request for a paternity test. As we now discuss, mother lacks standing to raise this issue and, in any event, any error was not prejudicial. We thus affirm the order terminating mother's parental rights.

Mother concedes that standing to appeal a final order extends only to a party aggrieved by the order from which the appeal is taken. (*In re Aaron R.* (2005) 130 Cal.App.4th 697, 703; *In re Crystal J.* (2001) 92 Cal.App.4th 186, 189 ["an appellant must demonstrate error affecting his or her own interests in order to have standing to appeal"]; Code Civ. Proc., § 902.) Consequently, to obtain review of a juvenile dependency ruling, a parent must establish that he or she is an aggrieved party. "To be aggrieved, a party must have a legally cognizable immediate and substantial interest which is injuriously affected by the court's decision. A nominal interest or remote consequence of the ruling does not satisfy this requirement." (*In re Carissa G.* (1999) 76 Cal.App.4th 731, 734.)

Mother contends she has standing to appeal the trial court's denial of Andres's request for a paternity test because the denial affected her parental rights. She urges: "Andres had a right to a determination of his paternity and an opportunity for elevation to presumed [father] status. If reunification were successful, Mother's parental rights would remain intact. Even if Andres were ultimately unable to reunify with [J.R.], Mother's parental rights would be preserved until final resolution of custody." Mother's contention, in other words, is that she has an interest in the determination of J.R.'s paternity because, had Andres been found to be J.R.'s biological father, Andres *might* have been able to achieve presumed father status and/or reunification services, which

might have led to successful reunification or, at a minimum, a delay in the termination of mother's parental rights.

For the reasons that follow, we conclude that even if Andres had been able to establish that he was J.R.'s biological father, he would not have been granted reunification services, either as a presumed or alleged father. Thus, the denial of paternity testing, even if erroneous, did not aggrieve mother, and hence she lacks standing to raise the issue.

A. Biological, Alleged, and Presumed Fathers

" 'Dependency law recognizes three types of fathers: presumed, alleged, and biological.' (*In re T.R.* (2005) 132 Cal.App.4th 1202, 1208.)" (*In re Kobe A.* (2007) 146 Cal.App.4th 1113, 1119-1120.) A biological father is one " 'who is related to the child by blood.' " (*In re E.T.* (2013) 217 Cal.App.4th 426, 438, citing § 361.3, subd. (c)(2).) "A man who may be the father of a child, but whose biological paternity has not been established, or, in the alternative, has not achieved presumed father status, is an 'alleged' father." (*In re Zacharia D.* (1993) 6 Cal.4th 435, 449, fn. 15.) A man who "receives the child into his . . . home and openly holds out the child as his . . . natural child" (Fam. Code, § 7611, subd. (d)) —i.e., "who 'promptly comes forward and demonstrates a full commitment to . . . paternal responsibilities—emotional, financial, and otherwise' " (*In re Jerry P.* (2002) 95 Cal.App.4th 793, 801-802)—is a "presumed father."

" 'A father's status is significant in dependency cases because it determines the extent to which the father may participate in the proceedings and the rights to which he is entitled. [Citation.] . . . "Presumed father status entitles the father to appointed counsel, custody (absent a finding of detriment), and a reunification plan." [Citation.]' (*In re T.R.*, *supra*, 132 Cal.App.4th 1202, 1209.)" (*In re Kobe A.*, *supra*, 146 Cal.App.4th at p. 1120; see also *In re J.H.* (2011) 198 Cal.App.4th 635, 644 [" ' "[O]nly a presumed . . . father is a 'parent' entitled to receive reunification services under section 361.5," and custody of the child under Welfare and Institutions Code section 361.2.' "].) In contrast, " '[d]ue process for an alleged father requires only that he be given notice and an

opportunity to appear and assert a position and attempt to change his paternity status, in accordance with procedures set out in section 316.2. [Citation.] He is not entitled to appointed counsel or to reunification services.' (*In re Kobe A.* (2007) 146 Cal.App.4th 1113, 1120." (*In re J.H.*, *supra*, 198 Cal.App.4th at p. 644.)

A biological father who is not also a presumed father also has "very limited rights. He is not entitled to custody of the child. (*Zacharia D.*, *supra*, 6 Cal.4th at p. 451; *Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 596.) Nor may he receive reunification services unless the court determines such services will benefit the child; section 361.5, subdivision (a) provides: "Upon a finding and declaration of paternity by the juvenile court or proof of a prior declaration of paternity by any court of competent jurisdiction, the juvenile court *may* order services for the child and the biological father, if the court determines that the services will benefit the child." (Italics added.)

B. Even If He Were J.R.'s Biological Father, Andres Could Not Have Been Designated a "Presumed" Father or Otherwise Granted Reunification Services

Mother assumes that if Andres had been granted a paternity test and found to be J.R.'s biological father, he would have received reunification services, either as a presumed or alleged father. For the reasons that follow, mother is wrong.

In *In re Joshua R.* (2002) 104 Cal.App.4th 1020 (*Joshua R.*), Joshua was taken into protective custody immediately after his birth in 1997. Joshua's mother did not know who his father was, but she identified three possible candidates. Joshua was returned to his mother for a time, but was the subject of two subsequent dependency proceedings in 1998 and 2002. During the second dependency proceeding, DCFS found alleged father Joshua L. (father) in state prison; father conceded Joshua could be his child, but declined to attend the dependency hearings. (*Id*. at pp. 1022-1023.) When the third dependency proceeding was filed, father once again was incarcerated, but apparently appeared at the jurisdictional/dispositional hearing, where he requested a paternity test. The court denied the request, and father appealed. (*Id*. at p. 1024-1025.)

The Court of Appeal affirmed the order denying the paternity test. It agreed with the juvenile court that father was not a presumed father, and thus he was not entitled to either family reunification services or custody. (*Joshua R.*, *supra*, 104 Cal.App.4th at p. 1025.) Further, although the court acknowledged a "theoretical advantage" father could gain from a finding of paternity, it held it inapplicable in the present case. The court explained: "The juvenile court has discretion to offer a mere biological father reunification services based on a finding it would benefit the child. (§ 361.5, subd. (a).) However, we conclude the court implicitly rejected that option when it found paternity irrelevant and denied [father's] request for genetic tests. Underlying that decision is the implied finding the minor would not benefit from the provision of services to [father]. That finding is supported by overwhelming evidence.

"[Father] has no relationship with the minor, and has never demonstrated a commitment to the child's welfare. He learned he was an alleged father when the minor was 17 months old. He waited until the child was five, and the subject of a third dependency proceeding, before requesting a paternity test.

"During that three-and-a-half year gap, [father] never sought visitation, much less custody, and never provided financial support for the child. He failed to appear at any of the previous dependency hearings concerning the minor. There is also the not insignificant fact [father] is again in prison, serving a three-year term. These facts easily constitute substantial evidence supporting the court's implied finding the minor would not benefit from the provision of services to [father], were he found to be the biological father.

"Because a finding of paternity would not entitle [father] to services or custody, and would not otherwise affect the course of this dependency proceeding, we conclude the juvenile court correctly found paternity irrelevant. Consequently, one of the statutory criteria for mandatory genetic testing was unmet here, and the court properly denied [father's] request." (*Joshua R., supra,* 104 Cal.App.4th at p. 1026.)

The present case is analogous. Andres cannot qualify as J.R.'s presumed father: Although he claims to have "openly h[eld] out the child as his natural child," he

indisputably never "receive[d] the child into his home." (Fam. Code, § 7611, subd. (d).) Therefore, the juvenile court was not required to offer Andres either custody or family reunification services. Further, as in *Joshua R.*, the juvenile court implicitly found that offering Andres reunification services would not benefit J.R., a finding that is supported by overwhelming evidence. It appears that Andres and J.R. have met only a handful of times—twice in 2011 and once in 2014—and have no relationship. Although Andres claims mother told him he was J.R.'s father in late 2011, he has provided no financial support for the child other than "diapers and other necessities" in the first few months of J.R.'s life and birthday money in 2014. And, although J.R. has been a dependent child since he was an infant, Andres waited nearly two and a half years to appear in the dependency action and request a paternity test.

J.R. unquestionably will suffer harm if a permanency plan is delayed. J.R. has been in the dependency system for nearly two and a half years and has lived in a series of foster homes. Andres has been in and out of prison and is unlikely to be able to provide a stable home for J.R. Moreover, a family has been identified who wishes to adopt J.R. and for whom an adoption home study has been completed. This family offers J.R. a chance at permanency—something he has never known. If Andres were to be offered reunification services, J.R. would likely lose this chance for adoption, and it is unknown whether another such opportunity would present itself.

For all of these reasons, a finding of paternity would not entitle Andres to either reunification services or custody of J.R., and would not otherwise affect the course of this dependency proceeding. Therefore, the juvenile court's denial of a paternity test, even if erroneous, is of no consequence to mother. She accordingly is not aggrieved by the juvenile court's order, and she lacks standing to challenge it.

C. This Case Is Distinguishable from In re Baby Boy V.

Mother contends that she has standing to pursue this appeal under the Court of Appeal's analysis in *In re Baby Boy V.* (2006)140 Cal.App.4th 1108 (*Baby Boy V.*). For the reasons that follow, we do not agree.

In *Baby Boy V.*, the mother abandoned the child at the hospital hours after giving birth. A dependency petition was filed on the child's behalf, and DCFS reported that the identity of the child's father was unknown. At a subsequent hearing, the court asked the mother to identify potential fathers; she refused. The court denied mother and the unidentified father reunification services and set a permanency plan hearing for nine months after the child's birth. (140 Cal.App.4th at pp. 1110-1111.)

About six weeks before that hearing, Jesus H. appeared at DCFS's office and said he was probably the child's father. He said he had just learned of the child's birth, wanted reunification services, and would comply with the court's orders. The social worker told him about the termination hearing, but she did not inform the court that Jesus had come forward or permit him to visit the child. (*Baby Boy V.*, *supra*, 140 Cal.App.4th at pp. 1111-1112.) Jesus then appeared at the termination hearing and requested a paternity test and reunification services. He told the court he had held the same job for eight years and had another child whom he supported. (*Id*. at pp. 1113-1114.) The court appointed counsel to represent Jesus, but denied his request for a paternity test. It then terminated mother's and Jesus's parental rights. (*Id*. at pp. 1112-1115.) Jesus appealed.

The Court of Appeal reversed. It noted that under the Supreme Court's decision in *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, when a father learns of a pregnancy and " 'promptly comes forward and demonstrates a full commitment to his parental responsibilities—emotional, financial, and otherwise—his federal constitutional right to due process prohibits the termination of his parental relationship absent a showing of his unfitness as a parent. Absent such a showing, the child's well-being is presumptively best served by continuation of the father's parental relationship. Similarly, when the father has come forward to grasp his parental responsibilities, his parental rights are entitled to equal protection as those of the mother.' " (*In re Baby Boy V.*, *supra*,

140 Cal.App.4th at p. 1117.) In the case before it, because Jesus came forward "at the earliest possible moment and when the baby had been in foster care for only eight months," and nothing in the record suggested he was an unfit parent, he was entitled to presumed father status, reunification services, and visitation. (*Id*. at pp. 1117-1118.)

The present case is distinguishable. Andres did not "come[] forward and demonstrate[] a full commitment to his parental responsibilities" at "the earliest possible moment"—he waited two and a half years before declaring himself to be J.R.'s father and seeking a paternity test. Therefore, Andres unquestionably is not a *Kelsey S.* father entitled to presumed father status. Moreover, unlike Baby Boy V., who was in foster care only eight months when Jesus identified himself, J.R. has been in the foster care system for nearly *two and a half years*. Accordingly, the court's analysis in *Baby Boy V.* is not controlling here.

DISPOSITION

The juvenile court's orders denying a paternity test and terminating parental rights are affirmed.

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EDMON, P. J.

We concur:

KITCHING, J.

ALDRICH, J.